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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,637	02/15/2001	Heinz-Jürgen Bachelier	ESN-38	5572
26875	7590	11/05/2003	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			COOLEY, CHARLES E	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 11/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/784,637	BACHELIER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Charles E. Cooley	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 5-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-19 is/are allowed.
- 6) ☒ Claim(s) 1,2,8,12,13 and 15 is/are rejected.
- 7) ☒ Claim(s) 5-7,9-11 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 01 August 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \*    c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

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## OFFICE ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. § 119, which papers have been placed of record in the file.

### *Drawings*

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 1 AUG 2003 have been approved by the Examiner. Additional Figure 2A is approved but note the following objection:
3. The drawings are objected to under 37 CFR § 1.83(a) since the drawings must show every feature of the invention specified in the claims. Therefore, the following features must be shown or the features canceled from the claims. No new matter should be entered.
  - a. the subject matter of newly presented claim 19.
4. Applicant is required to submit a proposed drawing correction in response to this Office Action. Any proposal by the applicant for amendment of the drawings to cure defects must include a print or pen-and-ink sketch showing changes in *red ink* in accordance with MPEP § 608.02(v).

**IMPORTANT NOTE:** The filing of new formal drawings to correct the noted defect may be deferred until the application is allowed by the examiner, but the print or

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pen-and-ink sketch with proposed corrections shown in red ink is required in response to this Office Action, and *may not be deferred*.

### ***Specification***

5. The substitute specification has been entered.
6. The abstract is acceptable.
7. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should mention the pump buckets.
8. The disclosure is objected to because of the following informalities:
  - a. the specification lacks a description of newly presented Figure 2A in the Brief Description of the Drawings and Description of the Preferred Embodiment(s) sections.Correction is required.

### ***Claim Rejections - 35 U.S.C. § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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10. Claims 1, 2, and 8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Broomall (US 3,224,744).

Broomall (US 3,224,744) discloses a homogenizer comprising a rotor 20 or 21 which is mounted for rotation in a first housing 23; a drive device (Figs. 7-8) coupled to rotate the rotor; a rotatable element 18 coupled to the drive device which is mounted for rotation in the first housing and driven for rotation independently of the rotor; wherein the rotatable element 18 is constructed as an impeller with a plurality of pump buckets 121-124 with a "deep curved profile" as seen in Fig. 4; the rotatable element 18 can be driven in the opposite to the rotor 20 or 21 (Fig. 4); wherein at least one shaft seal 84, 85, or 86 is provided to seal the interior of the first housing of the homogenizer against the surroundings (Fig. 8).

***Claim Rejections - 35 U.S.C. § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Broomall (US 3,224,744) in view of Scheimann et al. (USP 5,253,937).

Broomall (US 3,224,744) discloses the first housing 23 having an inlet opening at 26 but does not disclose the return line and valve. Scheimann et al. (USP 5,253,937) discloses a device having a container housing 12 with an outlet opening 44. Multiple return lines 34 communicate with the outlet opening 44 for returning material back to the container housing 12 under the control of valves 40. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the device of Broomall (US 3,224,744) with a return line and valve as disclosed by Scheimann et al. (US 5,253,937) for the purpose of enabling the concentration of substances in the mixture to be adjusted as desired (Col. 5, lines 1-5).

14. Claim 15 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Broomall (US 3,224,744) in view of Haegeman (USP 5,980,100).

Broomall (US 3,224,744) discloses the recited seal but not a sliding ring seal. Haegeman (USP 5,980,100) discloses a shaft 24 and a seal 22 for the shaft. The seal

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is of the sliding ring type. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have substituted the seal of Broomall (US 3,224,744) with a sliding ring seal as disclosed by Haegeman for the purpose of sealing the shaft against its surrounding elements (Col. 2, lines 45-48).

15. Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Broomall (US 3,224,744) in view of Tanaka (US 5,779,360).

Broomall (US 3,224,744) does not disclose the stator interleavings on the first housing. Tanaka (US 5,779,360) discloses a homogenizing arrangement similar to that of Broomall (US 3,224,744) with a rotor 17 and drive device 15 which rotates the rotor 17 in a housing 2. The housing has fixed-position stator interleavings 14. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the housing of Broomall (US 3,224,744) with stator interleavings as disclosed by Tanaka for the purpose of disturbing the movement of the material in the housing to enhance homogenization thereof (col. 3, lines 16-23).

***Allowable Subject Matter***

16. Claims 5, 6, 7, 9, 10, 11, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

17. Claims 16-19 are allowable over the prior art of record.

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***Response to Amendment***

18. Applicant's arguments with respect to the pending claims have been considered but are deemed to be moot in view of the new grounds of rejection necessitated by Applicant's remarks on the "pump buckets" issue.

***Conclusion***

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Charles Cooley whose telephone number is ☎ (703) 308-0112.

20. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1700 receptionist whose telephone number is ☎ (703) 308-0651.



Dated: **22 October 2003**

**Charles Cooley  
Primary Examiner  
Art Unit 1723**